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 7 WASH, a California corporation, and DOUBLE D & DOUBLE J, LLC, a California
 Limited Liability Company

8 **UNITED STATES DISTRICT COURT**

9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 KAREL SPIKES,

11 Plaintiff,

12 v.

13 IN & OUT CAR WASH, INC. dba, NORTH
 14 PARK CAR WASH; DOUBLE D &
 DOUBLE J, LLC and DOES 1 THROUGH
 15 10, Inclusive

16 Defendants.

CASE NO. '07CV 2026 DMS (WMC)

**ANSWER OF DEFENDANTS IN &
 OUT CAR WASH, INC. DBA NORTH
 PARK CAR WASH AND DOUBLE D &
 DOUBLE J, LLC TO PLAINTIFF'S
 CIVIL COMPLAINT**

DEMAND FOR JURY TRIAL

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 18 Defendants IN & OUT CAR WASH, INC. DBA NORTH PARK CAR
 19 WASH, a California corporation, and DOUBLE D & DOUBLE J, LLC, a California
 20 Limited Liability Company (hereinafter referred to collectively as "Defendants") hereby sever
 21 themselves from all other defendants, and answer Plaintiff KAREL SPIKES' (hereinafter referred
 22 to as "Plaintiff") Civil Complaint as follows:

23 1. Defendants admit that jurisdiction and venue in this court, as alleged in paragraphs 1
 24 and 2 of Plaintiff's Civil Complaint are proper.

25 2. These answering Defendants have no information or belief sufficient to enable them to
 26 answer the allegations of paragraphs 3, 6, 7, 8, 9, 12, 13, 14, 15, 18, 23, 25, 26, 27, 29, 30, 32, 33,
 27 and 34 of Plaintiff's Civil Complaint on file herein, and basing their denial on that ground, deny
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1 generally and specifically each and every allegation contained therein.

2 3. Defendants deny paragraph 4 of Plaintiff's Civil Complaint, except, Defendant IN &
 3 OUT CAR WASH, INC. admits that it is a corporation organized and existing under the laws of
 4 the State of California, and operates the NORTH PARK CAR WASH business located at 3401
 5 University Avenue, San Diego, California.

6 4. Defendants deny paragraph 5 of Plaintiff's Civil Complaint, except Defendant
 7 DOUBLE D & DOUBLE J, LLC admits that it is a California Limited Liability Company
 8 organized and existing under the laws of the State of California, and the owner of real property
 9 situated at 3401 University Avenue, San Diego, California.

10 5. These answering Defendants generally and specifically deny each and every
 11 allegation of paragraphs 10, 11, 17, 20, 21, and 22 of Plaintiff's Civil Complaint on file herein.

12 6. These answering defendants re-allege and incorporate their foregoing answers as set
 13 forth in paragraphs 1 through 5, inclusive, of this Answer to Plaintiff's Civil Complaint on file
 14 herein as though fully set forth herein in answering paragraphs 16, 19, 24, 28 and 31 of Plaintiff's
 15 Civil Complaint on file herein.

16 FIRST AFFIRMATIVE DEFENSE

17 These answering Defendants are informed and believe and thereon allege that each and
 18 every cause of action of Plaintiff's Civil Complaint fails to state facts sufficient to constitute causes
 19 of action against these answering Defendants.

20 SECOND AFFIRMATIVE DEFENSE

21 These answering Defendants are informed and believe and thereon allege that as to each
 22 and every cause of action, Plaintiff has failed, refused, and neglected to take reasonable steps to
 23 mitigate his alleged damages, if any, thus barring or diminishing Plaintiff's recovery herein.

24 THIRD AFFIRMATIVE DEFENSE

25 These answering Defendants are informed and believe and thereon allege that there has
 26 been no violation of the Unruh Civil Rights Act in that there has been no refusal by the responsible
 27 party keeping Plaintiff from entering the premises and the structure of the premises allows Plaintiff
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1 to use the facilities in his wheelchair.

2 **FOURTH AFFIRMATIVE DEFENSE**

3 These answering Defendants are informed and believe and thereon allege Plaintiff's Civil
4 Complaint does not state facts sufficient to constitute a claim for punitive damages.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 These answering Defendants are informed and believe and thereon allege with respect to
7 the alleged inaccessible condition mentioned in Plaintiff's Civil Complaint, the premises are in
8 substantial, if not full, compliance with the requirements set forth in the ADA and California's
9 Title 24 for existing facilities. Plaintiff is therefore not entitled to any damages.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 These answering Defendants are informed and believe and thereon allege that Plaintiff is
12 barred from recovery by virtue of the doctrine of unclean hands.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 These answering Defendants are informed and believe and thereon allege that the
15 responsible party has modified their policies, practices and procedures as required by the ADA to
16 afford individuals with a disability full and equal access to the goods, services, facilities,
17 privileges, advantages and accommodations offered by the premises at issue.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 These answering Defendants are informed and believe and thereon allege that the
20 responsible party has alternative methods of complying with the ADA, thereby providing full and
21 equal access for individuals with a disability to the goods, services, facilities, privileges,
22 advantages and accommodations offered at the premises at issue.

23 **NINTH AFFIRMATIVE DEFENSE**

24 With respect to the alleged inaccessible conditions mentioned in Plaintiff's Civil
25 Complaint, these answering Defendants are informed and believe and thereon allege that the
26 responsible party is in complete compliance with California Civil Code §§51, 52, and 54.1.

27 / / /

TENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon alleges that Plaintiff's Civil Complaint herein fails to allege facts sufficient to state a claim for the recovery of any civil penalty from these answering Defendants, and the imposition of such a penalty would violate the constitutional rights of these answering Defendants.

ELEVENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that Plaintiff's Civil Complaint and each alleged cause of action therein is barred by the applicable statute of limitations.

TWELFTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that Plaintiff is barred from recovery by virtue of the doctrine of laches.

THIRTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that the discriminatory actions alleged by Plaintiff were not intentional. As a result, Plaintiff is not entitled to the relief requested in the Plaintiff's Civil Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that any alleged failure by the responsible party to alter, repair, or modify the premises in question does not give rise to the cause of action by Plaintiff under the Unruh Act, since the Unruh Act specifically exempts such conduct from the scope of the act.

FIFTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that the injuries and damages of which Plaintiff complains, and for which Plaintiff seeks recovery, if any, were the result of causes independent of any purported acts or omissions on the part of these answering Defendants, which causes operated as intervening and superceding causes, thereby cutting off any liability on the part of these answering Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that to the extent that any damage sustained by Plaintiff, or any other person, was proximately caused by Plaintiff or any other party's failure to mitigate damages by failing to exercise reasonable care in preventing such damage, Plaintiff is barred from recovering such damages against these answering Defendants.

SEVENTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that Plaintiff has knowingly and intentionally waived any and all claims against these answering Defendants and is barred and estopped from any recovery therein.

EIGHTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that some or all of the claims in the Plaintiff's Civil Complaint are barred because the removal of physical barriers, if any exist, by the responsible party is not readily achievable.

NINETEENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that some or all of the claims in the Plaintiff's Civil Complaint are barred because the removal of physical barriers, if any exist, by the responsible party would be structurally impracticable.

TWENTIETH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that some or all of the claims in Plaintiff's Civil Complaint are moot in that these answering Defendants is and/or has been in compliance with the laws, statutes, and regulations governing treatment of individuals with physical limitations.

TWENTY-FIRST AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that any alleged fault, act or omission on the part of these answering Defendants, if any, was neither the cause in fact nor the proximate cause of Plaintiff's damages or liabilities, if any. Rather, any such alleged

acts or omissions, if any, were only secondary, inconsequential, and indirect, and in no way contributed to or caused the alleged damages to Plaintiff.

TWENTY-SECOND AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that Plaintiff's Civil Complaint, and each cause of action contained therein, fails to allege facts sufficient to entitle Plaintiff to recover attorney's fees.

TWENTY-THIRD AFFIRMATIVE DEFENSE

These answering Defendants allege that Plaintiff failed to give timely notice, if any, of his claim and these answering Defendants have been subsequently prejudiced thereby.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

These answering Defendants allege that Plaintiff's Civil Complaint, and every claim asserted therein, is premature.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

These answering Defendants allege that the court has no subject matter jurisdiction over the claims alleged in Plaintiff's Civil Complaint because, among other things, these answering Defendants is informed and believes that Plaintiff is not within the class that the Americans With Disabilities Act was intended to protect from unlawful discrimination on the basis of disability and Plaintiff is not an aggrieved person under the Americans With Disabilities Act.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

These answering Defendants allege that Plaintiff has no standing to assert the claims alleged in Plaintiff's Civil Complaint because, among other things, these answering Defendants are informed and believe that Plaintiff is not within the class that the Americans With Disabilities Act was intended to protect from unlawful discrimination on the basis of disability and Plaintiff is not an aggrieved person under the Americans With Disabilities Act nor any other law similar to or authorizing suits under the Americans With Disabilities Acts.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

These answering Defendants allege that at all times mentioned in Plaintiff's Civil

1 Complaint, that admittance of Plaintiff to the subject premises would require construction,
 2 alteration, or structural modification of the subject building.

3 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

4 These answering Defendants allege that these answering Defendants have not carried out
 5 any construction alterations to the subject property which would trigger access requirements under
 6 federal or state law.

7 TWENTY-NINTH AFFIRMATIVE DEFENSE

8 These answering Defendants are informed and believe and thereon allege that the access
 9 requirements sought in Plaintiff's Civil Complaint are not reasonably or readily achievable.

10 THIRTIETH AFFIRMATIVE DEFENSE

11 These answering Defendants are informed and believe and thereon allege that Plaintiff is
 12 not entitled to recover punitive damages against these answering Defendants because these
 13 answering Defendants did not authorize, have advance knowledge of, or ratify in any way the acts
 14 and/or omissions alleged in Plaintiff's Civil Complaint.

15 THIRTY-FIRST AFFIRMATIVE DEFENSE

16 These answering Defendants are informed and believe and thereon allege that as to each
 17 alleged cause of action, Plaintiff's Civil Complaint is barred as the requested relief would
 18 constitute an undue hardship on these answering Defendants.

19 THIRTY-SECOND AFFIRMATIVE DEFENSE

20 These answering Defendants are informed and believe and thereon allege that Plaintiff has
 21 failed to exhaust the administrative remedies available to him under 42 U.S.C. 12188, 42 U.S.C.
 22 §2000a-3(c), and California Civil Code §55.1, and thus is not entitled to any relief.

23 THIRTY-THIRD AFFIRMATIVE DEFENSE

24 These answering Defendants are informed and believe and thereon alleges that their has
 25 insufficient knowledge or information upon which to form a belief as to whether they may have
 26 available additional, as yet unstated affirmative defenses to the Civil Complaint herein. These
 27 answering Defendants hereby reserve the right to assert these additional affirmative defenses in the
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1 event discovery indicates such would be appropriate.

2 WHEREFORE, Defendants IN & OUT CAR WASH, INC. DBA NORTH PARK CAR
3 WASH, a California corporation, and DOUBLE D & DOUBLE J, LLC, a California
4 Limited Liability Company, pray for judgement as follows:

- 5 a. That Plaintiff take nothing by reason of his Civil Complaint;
6 b. That the Civil Complaint be dismissed with prejudice;
7 c. For an award of reasonable attorney's fees and costs incurred herein; and
8 d. For such other and further relief as the court may deem just and proper.

9 LAW OFFICES OF
10 JOSEPH BARR & ASSOCIATES

11 DATED: _____

12 By: s/ Joseph J. Barr, Jr.
13 JOSEPH J. BARR, JR.
14 Attorneys for IN & OUT CAR WASH, INC.
15 DBA NORTH PARK CAR
16 WASH, a California corporation, and DOUBLE
17 D & DOUBLE J, LLC, a California
18 Limited Liability Company